



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Virginia Waste Management Board
VAC Chapter Number:	9 VAC 20-101-10 et seq.
Regulation Title:	Vegetative Waste Management & Yard Waste Composting Regulations
Action Title:	Retain Existing Regulations
Date:	March 8, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The Virginia Solid Waste Management Act and other regulations of the Virginia Waste Management Board (board) contain exemptions for certain vegetative waste management or yard waste composting facilities from the general requirements for solid waste management facilities. The Act also directs the board to provide reduced permitting requirements for facilities that exclusively manage vegetative waste or compost yard waste. Some facilities are exempt from all regulatory control, others are limited to relief from the requirement for the operator to have a permit and some are entitled to a reduced permitting requirement. The regulations consolidate all these provisions in one document and specify the conditions under which the exemptions apply. In some cases, a report must be submitted to the Department of Environmental Quality (department), and the forms for those reports are included in the regulations.

The regulations also contain an exemption applying to owners of real property who use small waste disposal units to bury vegetative, land-clearing debris (primarily tree stumps and root mat) on-site. However, they must meet 15 qualifying criteria. The regulations allow the use of the qualifying units without a permit.

The regulations prescribe the technical and other standards for vegetative waste management and yard waste composting facilities and address siting, design and construction, operation, and closure. Procedures are set out for obtaining a permit by rule and minimize the documentation submitted by the facility operator in order to obtain the permit and the time required to obtain the permit.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Article 2 (§ 10.1-1408.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia contains the laws governing the management of nonhazardous solid wastes. Section 10.1-1408.1 of the Code of Virginia requires all disposal, treatment and storage of nonhazardous solid waste be by permit from the Director of the department. In subsections I, K, and L, the statute mandates exemptions and reduced permitting procedures for vegetative waste management and yard waste composting facilities. The board is authorized by § 10.1-1402 of the statute to promulgate regulations concerning the permitting process, and the board has adopted general regulations for nonhazardous solid waste management. Under the same rulemaking authority, the board made separate regulations to provide the exemptions and reduced permitting procedures required of it by the subsections the statutes previously cited.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Comments

Only one comment letter was received in response to the Notice of Periodic Review. That comment came from an assistant administrator for a rural county government. The commenter reports that, because compliance with the regulations is expensive and impractical, many contractors are illegally disposing of debris waste in ravines and uncontrolled and undocumented dumps. This illegal disposal is a source of problems for the county and future holders of the real estate. The commenter asks that localities be authorized to issue permits for burning and burial of the debris waste if local zoning laws allow it; if the disposal area is surveyed; if the deed bears

a notation locating the site of the burning or burial; if adequate safeguards are provided related to erosion, surface waste protection, fire and vector control; and if the property owner agrees to inspection by the Department of Environmental Quality and local authorities.

Responses

In development of the original regulations in 1997, a technical advisory committee considered using the regulations to empower local governments to supervise and control small landfills for land-clearing debris. The concept was rejected by local government members as legally impractical, as being an unfunded mandate upon local governments, and as a new regulatory duty that few local governments wanted or could accept.

The DEQ, through its air compliance personnel, and local governments have worked with the regulated community in limited open burning of land-clearing debris. In Ticonderoga Farms, Inc. versus County of Loudoun, et al., 242 Va.170, 409 S.E.2nd 446 (1991), the Virginia Supreme Court decided that counties have authority to exercise siting, permitting and other powers by ordinance, provided those ordinances are not in conflict with state laws (and it is inferred with state regulations). The department is willing to work with localities to help define the legal options for land-clearing debris management.

The statutes provide that the Virginia Waste Management Board is responsible for regulatory control of waste management facilities. The board has adopted regulations in 1997 after considerable deliberation and public participation. The Department of Environmental Quality should work closely with local government to stop those who illegally dump debris waste. No other comments were received from the public that suggested how the regulations themselves might be improved.

Advisory group

An informal advisory group was not formed for purposes of assisting in the periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

In the three years since the regulations were adopted, three facilities were permitted by rule as provided for by the regulations. The main objective of the regulations was mandated by the statutes, to provide a less burdensome method of permitting such vegetative waste management and yard waste composting facilities. The three facilities permitted demonstrate that the regulations are effective in meeting this goal.

The regulations provide control to ensure protection of human health and the environment through appropriated standards and procedures for the management of vegetative waste and yard

waste. That protection would be provided by other solid waste management regulations if these regulations did not exist. However, these regulations, by their focus on facilities that manage only vegetative and yard waste and by providing simpler and faster permitting procedures, encourage and facilitate development of these facilities, which are considered more beneficial than disposal facilities.

The impact on families and family stability is indirect. Families clearly benefit from having a healthy and safe environment to nurture them. Homeowners benefit from composting facilities in that they often use the product as mulch for lawn and garden care. Since composting facilities are a cheaper means of dealing with wood waste, landfilling costs are sometimes avoided. The savings can pass down to taxpayers and homeowners who generate the waste.

The improper disposal of wood waste can be a danger to farms and forests by damaging productive lands and being a source of fires and vermin. The regulations intend to enforce sensible and controlled wood waste management and disposal. They also promote the production of good quality compost for agriculture and home use. The regulations protect and benefit farms and forests and their role in the production of food, feed, fiber, forest products, forage, oilseed and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion

The regulations have been used successfully by the department and the regulated community and are felt to be understandable and clearly written. So that all options for dealing with vegetative waste will appear in one document, the regulations contain a recitation of statutory exemptions and other provision that are not uniquely a part of the regulations themselves. These items are clearly labeled and they track the language of the statutes closely to avoid confusion. The statutory language is somewhat complex and difficult, but to exercise the option to simplify the language in the regulations would lead to error and conflict with the statutes that must be avoided.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The option of not having these regulatory provisions is not available since the statutes mandate them. The option of merging the regulations with other solid waste management regulations is not considered advisable. The public and regulated community are better served by finding reduced permitting requirements for vegetative waste and yard waste facilities in a separate body of regulations.

The regulations contain a provision that allows small landfills for land-clearing debris to be built without a permit but under strict regulatory controls. When the provision was adopted, it was the subject of much debate. There has been no change in this situation, and no better approach has

been suggested. No direct comments were received on this issue. Therefore, the option remains for such a landfill to be constructed, if the situation warrants. The board and department know of no better solution.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

The Department of Environmental Quality is recommending that the regulation should stay in effect without change.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

While the regulations are not involved directly in family life, it is widely believed that families are stronger and happier when they enjoy good health and a safe environment in which to live.